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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,066	07/17/2001	Antonio Mugica	38146	1266
29569	7590	09/16/2004	EXAMINER	
JEFFREY FURR 253 N. MAIN STREET JOHNSTOWN, OH 43031			PATEL, ASHOKKUMAR B	
			ART UNIT	PAPER NUMBER
			2154	

DATE MAILED: 09/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/682,066

Applicant(s)

MUGICA ET AL.

Examiner

Ashok B. Patel

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 17-22 are subject to examination.

#### ***Response to Arguments***

2. Applicant's arguments filed July 15, 2004 have been fully considered but they are not persuasive for the following reasons.

a. In response to Applicant's remark that "By the above amendment Applicants have amended the title to emphasize the novelty of the invention.", Examiner did not notice an amendment made to the title of the application.

b. Although the Applicant has made a remark that "Also applicants have rewritten all claims to define the invention more particularly and distinctively so as to overcome the technical rejections and define the Invention patentably over the prior art.", no arguments pertaining to any specific prior art is provided, and as such no response is considered necessary.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 17-22, it is unclear how the network protocol independency is achieved as indicted in the preamble of claim 1. Absent such a recitation in the claims, it is unclear what the intended metes and

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bounds are. For purpose of this office action, they will be treated as the claimed device is achieving the network protocol independence.

Regarding claim 1, it is unclear how the "physical network" is related to other elements of the claim. Absent such a recitation in the claims, it is unclear what the intended metes and bounds are. For purpose of this office action, the claim will be treated as the claimed device has a relation with physical network.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boucher et al. (hereinafter Boucher)(US 6,226,680) in view of Park et al. (hereinafter Park)(US 5,386,412).

**Referring to claims 17,18, 19 and 20,**

The reference Boucher teaches the physical layer with two sub layers, the physical medium which is an interface to the transmission means and the physical transmission layer which handles the transmission of data on a communication means and the physical layer is based in hardware (col. 1, lines

53-55). The reference Boucher teaches the functions of the layers such as routing by the network layer, load balance and packet transportation by the transport layer and data encryption by the presentation layer. The reference also teaches that the difference between the TCP/IP and OSI reference models where the functions of the session and presentation layers are integrated into adjacent layers. (col. 1, lines 60-67 and col. 2, lines 1-16). The reference teaches Boucher teaches seven processing layer - Open systems Interconnection (OSI) reference model and TCP/IP reference model which essentially employs five of the seven layers of OSI including the physical layer and the application layer (col.1, lines 34-67 and col. 2, lines 1-18). Also, it teaches the protocol processing method resulting in collapsing the layers into a single wide layer. (Col.3, lines 41-45). The reference Boucher fails to teach to establish a multilayered compressed protocol in which the functions of the combined layers are combined into a single protocol layer. The reference Park teaches establishing a multilayered compressed protocol in which the functions of the combined layers are combines into a single protocol layer. (col.3, lines 4-11, and Fig.3A, element 62). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention was made to combine Boucher with Park to establish a multilayered compressed protocol (smart network layer) which interfaces with the physical layer and the application layer and with claimed sublevels. Because, the system of a single wide layer greatly increases the speed of processing and the efficiency of moving the data being communicated as taught by Boucher.

**Referring to claims 21 and 22,**

The reference Boucher teaches "A data link layer is serviced by the physical layer of each host, the data link layers providing frame division and error correction to the data received from the physical layers, as well as processing acknowledgment frames sent by the receiving host.(col.1, lines 55-60)(Physical transmission layer handles damaged, lost and duplicate frames. It is well known in the art that the transmission layer could be connection-oriented and/or connectionless services.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ashok B. Patel whose telephone number is (703) 305-2655. The examiner can normally be reached on 8:00am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A Follansbee can be reached on (703) 305-8498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Abp  
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